Exxon Chemical (M) Sdn Bhd v Menteri Sumber Manusia, Malaysia & Ors

FEDERAL COURT (PUTRAJAYA) — CIVIL APPEAL NO 01–6 OF 2004(W)
STEVE SHIM CJ (SABAH AND SARAWAK), SITI NORMA YAAKOB AND ABDUL HAMID MOHAMAD FCJJ
18 JANUARY 2005

Labour Law — Industrial Court — Discretion of Minister — Employees were retrenched and paid compensation — Employees considered themselves dismissed without just cause or excuse lodged complaints — Whether Minister obliged to refer representations to Industrial Court — Whether Minister exercised discretion correctly

The second, third and fourth respondents ('the said respondents') were industrial workers employed by the appellant at its terminal at South Port, Port Klang who considered themselves dismissed without just cause or excuse as a result of the closure and relocation of the port. The appellant alleged that after consultation with the said respondents and their union and upon terms agreed between the appellant and the union, the said respondents were retrenched and paid compensation. It is further alleged that the said respondents accepted the payments without protest. The respondents then lodged complaints to the Director-General of Industrial Relations ('DGI') under s 20(1) of the Industrial Relations Act 1967 ('the Act'). The matter could not be settled by the DGI and was referred to the Minister who pursuant to s 20(3) of the Act referred the matter to the industrial court for resolution. The appellant applied to the high court for an order of certiorari to quash the Minister's decision. The High Court dismissed the application and the appeal to the court of appeal was dismissed by a majority. Against that decision, the appellant sought leave to appeal. On 23 March 2004, this court granted the appellant leave to appeal on three questions as follows: (1) Is the High Court under a duty to conduct a meticulous examination of the facts and documents put before the Minister when it was judicially reviewing his exercise of discretion under s 20(3) of the Act? (2) Was the High Court correct in stating that the Minister was obliged to refer the matter to the Industrial Court under s 20(3) of the Act so long as he felt that there was a serious issue of fact and law which required to be determined? (3) If the answer to (2) above is in the affirmative, has the Minister exercised his discretion correctly in the instant case?

Held, dismissing the appeal:

(1) There was no magic in the use of the phrase 'meticulous examination of the facts.' It merely means that there should be an objective examination of the factual matrix available before the Minister in order to ascertain whether a reasonable person, similarly circumstanced, would have arrived at the decision

which the Minister had done. It was clear that the court's duty was reasonably extensive. The Supreme Court in *Minister of Labour, Malaysia v National Union of Journalists, Malaysia and another appeal* [1991] 1 MLJ 24 took the position that our courts had since the case of *Associated Provincial Picture Houses Ltd v Wednesbury Corp* [1948] 1 KB 223 consistently applied the basic legal principles laid down in that case as guidelines. The application of those principles would require the court to undertake an objective appraisal or examination of the facts presented to the Minister at the material time (see paras 4–6).

(2) The word 'feels' was subject to eludication. If it means a finding or conclusion arrived at by the Minister on the basis of the available facts and documents before him, then so long as he has conducted an objective examination of those facts and documents in accordance with the legal principles, the Minister was under a duty to refer the representations to the industrial court for resolution. It has to be noted that the representations must necessarily relate to the allegations made by the employees that they had been dismissed without just cause or excuse. This was implicit in s 20 of the Act. Furthermore, the serious issue of fact and law must have relevance to the resolution of the dispute between the employer and the employees arising from the representations (see para 8).

(3) A perusal of the documents would seem to indicate that Esso Malaysia Bhd ('EMB') was 65% owned by Exxon Corporation and Exxon Chemicals Sdn Bhd ('the appellant') was 100% foreign owned by Exxon Corporation. This tends to suggest a connection between the Esso companies with the appellant. If some form of corporate relationship, however tenuous, existed between the appellant and the Esso companies, this might well be sufficient to suggest that there was some understanding that the appellant should take all reasonable steps to redeploy or relocate the respondents with any of the Esso companies in Malaysia in certain circumstances. True, there was documentary evidence to show that the appellant made attempts to redeploy the said respondents but failed. The respondents appeared to have disputed this or at least the extent of the attempts involved. As such, both oral and documentary evidence would have to be led. It would therefore be in this context that the Minister had thought it fit to refer the representations to the Industrial Court. The Minister had acted reasonably and correctly in doing so (see paras 14, 16).

[Bahasa Malaysia summary

Responden-responden kedua, ketiga dan keempat ('responden-responden tersebut') adalah pekerja perindustrian yang bekerja dengan perayu di pangkalannya di South Port, Port Klang yang telah menganggap diri mereka dibuang kerja tanpa sebab atau alasan yang adil yang disebabkan oleh penutupan dan pindahan pangkalan tersebut. Perayu menyatakan bahawa selepas perundingan dengan responden-responden tersebut dan persatuan pekerja mereka dan selepas terma-terma dipersetujui di antara perayu dan persatuan pekerja, responden-responden tersebut telah diberhentikan kerja dan dibayar pampasan. Ia juga menyatakan bahawa responden-responden tersebut telah menerima bayaran tersebut tanpa bantahan. Responden-responden

tersebut telah membuat aduan kepada Ketua Pengarah Perhubungan Perusahaan ('KPPP') di bawah s 20(1) Akta Perhubungan Perusahaan 1967 ('Akta tersebut'). Perkara tersebut tidak dapat diselesaikan oleh KPPP dan telah dirujuk kepada Menteri yang merujuknya di bawah s 20(3) Akta tersebut kepada mahkamah perusahaan untuk penyelesaian. Perayu memohon ke mahkamah tinggi untuk satu perintah certiorari untuk membatalkan keputusan Menteri tersebut. Mahkamah tinggi menolak permohonan tersebut dan rayuan ke mahkamah rayuan juga ditolak oleh majoriti. Terhadap keputusan tersebut, perayu memohon kebenaran untuk merayu. Pada 23 Mac 2004, mahkamah memberikan perayu kebenaran merayu atas tiga soalan-soalan seperti berikut: (1) Adakah Mahkamah Tinggi di bawah satu kewajipan untuk menjalankan satu penelitian fakta-fakta dan dokumen-dokumen yang diberikan kepada Menteri apabila ia mengkaji semula dalam melaksanakan budi bicaranya di bawah s 20(3) Akta tersebut? (2) Adakah Mahkamah Tinggi betul dalam menyatakan bahawa Menteri wajib merujuk perkara ke Mahkamah Perusahaan di bawah s 20(3) Akta tersebut sekiranya beliau berpendapat terdapat isu fakta dan undang-undang yang serius untuk ditentukan? (3) Sekiranya jawapan kepada (2) di atas adalah positif, sama ada Menteri tersebut telah menggunakan budi bicara beliau dengan betul dalam kes ini?

Diputuskan, menolak rayuan tersebut:

(1) Tiada keistimewaan dalam penggunaan perkataan 'meticulous examination of the facts.' Ia hanya bermakna sepatutnya terdapat satu penelitian secara objektif fakta matriks yang sedia ada sebelum Menteri tersebut bagi tujuan menentukan sama ada seseorang yang munasabah, dalam keadaan yang sama, akan mencapai keputusan seperti Menteri tersebut. Adalah jelas kewajipan mahkamah lebih kurang meluas. Mahkamah Agung di dalam kes *Minister of Labour, Malaysia v National Union of Journalists, Malaysia & Another Appeal* [1991] 1 MLJ 24 mengambil kedudukan bahawa mahkamah-mahkamah kami telah semenjak kes *Associated Provincial Picture Houses Ltd v Wednesbury Corp* [1948] 1 KB 223 secara konsisten menggunakan prinsip-prinsip undang-undang yang asas yang diputuskan oleh kes tersebut sebagai panduan. Pemakaian prinsip-prinsip tersebut akan memerlukan mahkamah untuk mengendalikan satu penilaian atau pemeriksaan secara objektif fakta-fakta yang dikemukakan kepada Menteri pada masa yang material tersebut (lihat perenggan 4–6).

(2) Perkataan 'feels' adalah tertakluk kepada penjelasan. Sekiranya ia bermaksud satu pencarian atau keputusan yang dicapai oleh Menteri atas asas fakta-fakta dan dokumen-dokumen yang sedia ada di hadapannya, maka sekiranya beliau telah melakukan satu penilaian secara objektif fakta-fakta dan dokumen-dokumen mengikut prinsip-prinsip undang-undang, Menteri tersebut di bawah satu kewajipan untuk merujuk representasi-representasi ke mahkamah perusahaan untuk satu pencapaian. Ia mesti dinyatakan bahawa representasi-representasi tersebut mesti berkaitan dengan pengataan-pengataan yang dibuat oleh pekerja-pekerja bahawa mereka telah dibuang kerja tanpa sebab atau alasan yang adil. Ini adalah tersirat di dalam s 20 Akta tersebut. Selanjutnya, isu fakta dan undang-undang yang serius mesti mempunyai

kaitan kepada pencapaian pertelingkahan di antara majikan dan pekerja-pekerja yang berbangkit daripada representasi-representasi tersebut (lihat perenggan 8).

(3) Penelitian dokumen-dokumen tersebut nampaknya menunjukkan bahawa Esso Malaysia Bhd ('EMB') adalah 65% dimiliki oleh Exxon Corporation dan Exxon Chemicals Sdn Bhd ('perayu') adalah 100% dimiliki oleh Exxon Corporation, satu syarikat asing. Ini menunjukkan satu hubungan di antara syarikat-syarikat Esso dengan perayu. Sekiranya terdapat sebarang bentuk perhubungan korporat, walaupun perhubungan yang remeh, wujud di antara perayu dan syarikat-syarikat Esso, ini berkemungkinan mencukupi untuk mencadangkan bahawa terdapat satu persefahaman bahawa perayu sepatutnya mengambil semua langkah-langkah yang munasabah untuk menempatkan semula responden-responden dengan mana-mana syarikat-syarikat Esso di Malaysia dalam keadaan-keadaan tertentu. Adalah benar terdapat bukti dokumentari-dokumentari menunjukkan bahawa perayu telah membuat percubaan untuk menempatkan semula responden-responden tersebut tetapi gagal. Responden-responden tersebut nampaknya mempertikaikan perkara ini atau setakat mana percubaan-percubaan itu dilakukan. Dengan itu, kedua-dua keterangan-keterangan lisan dan dokumentari harus dikemukakan. Dengan itu, dalam konteks ini, Menteri tersebut telah berpendapat bahawa ia adalah sesuai untuk representasi-representasi dirujuk ke mahkamah perusahaan. Menteri tersebut telah bertindak secara munasabah dan betul apabila berbuat demikian (lihat perenggan 14, 16).]

Notes

For cases on discretion of Minister, see 8(1) *Mallal's Digest* (4th Ed, 2006 Reissue) paras 1418–1434.

Cases referred to

Ashbridge Investments Ltd v Minister of Housing and Local Government [1965] 1 WLR 1320 (refd)

Associated Provincial Picture Houses Ltd v Wednesbury Corp [1948] 1 KB 223 (refd)

Harpers Trading (M) Sdn Bhd v National Union of Commercial Workers [1991] 1 MLJ 417 (refd)

Hong Leong Equipment Sdn Bhd v Liew Fook Chuan and another appeal [1996] 1 MLJ 481 (refd)

Malayan Banking Bhd v Association of Bank Officers, Peninsular Malaysia & Anor [1988] 3 MLJ 204 (refd)

Minister of Labour, Malaysia v National Union of Journalists, Malaysia and another appeal [1991] 1 MLJ 24 (refd)

Legislation referred to

Industrial Relations Act 1967 s 20(1), (3)

Lim Heng Seng, Edward Saw with him (Ng Yook Woon, Andrew TC Saw & Co) for the appellant.

Dato' Mary Lim Thiam Suan, Amarjeet Singh with her (Senior Federal Counsel) for the respondents.

Steve Shim CJ (Sabah and Sarawak) (delivering judgment of the court):

THE ISSUES

[1] On 23 March 2004, this court granted the appellant leave to appeal on three questions. Having regard to the issues raised therein, we find it necessary, for the sake of clarity, to reframe the questions as follows:

(i) Is the High Court under a duty to conduct a meticulous examination of the facts and documents put before the Minister when it is judicially reviewing his exercise of discretion under s 20(3) of the Industrial Relations Act 1967 ('the Act') regardless of whether it is a decision to refer or not to refer the matter to the Industrial Court?

(ii) Is the High Court correct in stating that the Minister is obliged to refer the matter to the Industrial Court under s 20(3) of the Act so long as he feels that there is a serious issue of fact and law which requires to be determined?

(iii) If the answer to (ii) above is in the affirmative, has the Minister exercised his discretion correctly in the instant case?

THE BACKGROUND FACTS

[2] The second, third and fourth respondents ('the said respondents') were industrial workers employed by the appellant at its terminal at South Port, Port Klang. The appellant was directed by the Selangor State Government to close its South Port terminal and to relocate its terminal operations to a 'common-user' terminal at West Port, Pulau Lumut, owned and operated by a third party company. As a result of the closure and relocation, the said respondents became redundant. The appellant alleged that after consultation with the said respondents and their union and upon terms agreed between the appellant and the union, the said respondents were retrenched and paid compensation pursuant to article 70 of the collective agreement. It is further alleged that the said respondents accepted the payments without protest. However, the said respondents considered themselves dismissed without just cause or excuse. They then lodged complaints to the Director-General of Industrial Relations under s 20(1) of the Act. The matter could not be settled by the Director-General at the conciliatory stage and was thereafter referred to the Minister. Pursuant to s 20(3) of the Act, the Minister in the exercise of his discretion, referred the matter to the Industrial Court for resolution. The appellant applied to the High Court for an order of certiorari to quash the Minister's decision. The High Court dismissed the application. The appellant men appealed to the Court of Appeal. That appeal was dismissed by a majority. Against that decision, the appellant sought leave to appeal before us. As we said, leave was granted.

DUTY OF REVIEWING COURT

[3] It is the appellant's counsel's contention that in judicial review proceedings, a meticulous examination of the facts presented to the Minister must be conducted by

the High Court as the reviewing court regardless of whether the Minister's decision was to refer or not to refer the matter to the Industrial Court under s 20(3) of the Act. According to counsel, a contrary approach would lead to dual standards being imposed depending on whether the employer or the employee is applying for judicial review. In this regard, counsel cites in support the following passage in the judgment of the Court of Appeal in *Hong Leong Equipment Sdn Bhd v Liew Fook Chuan and another appeal* [1996] 1 MLJ 481 which states:

> Thus, when a question arises as to whether the Minister has correctly exercised his discretion under s 20(3) of the Act, it is the duty of a court to undertake a meticulous examination of the facts that were made available to the Minister. If the examination reveals that the representations under s 20(l) are neither frivolous nor vexatious, a decision not to refer is liable to be quashed by certiorari.

[4] Quite clearly, the Court of Appeal takes the view that the reviewing court is under a duty to conduct a meticulous examination of the facts placed before the Minister at the material time. There was much debate before us about the words 'meticulous examination of the facts.' In our view, there is no magic in the use of that phrase. It does not set any universal standard. It is not an inflexible term. It merely means that there should be an objective examination of the factual matrix available before the Minister in order to ascertain whether a reasonable person, similarly circumstanced, would have arrived at the decision which the Minister had done. The extent of that duty had been succinctly stated by Abdoolcader SCJ in *Malayan Banking Bhd v Association of Bank Officers, Peninsular Malaysia & Anor* [1988] 3 MLJ 204 when he quoted, with approval a statement of Lord Denning HL in the case of *Ashbridge Investments Ltd v Minister of Housing and Local Government* [1965] 1 WLR 1320 at p 1326:

> The court can only interfere on the ground that the Minister has gone outside the powers of the Act or that any requirement of the Act has not been complied with. Under this section, it seems to me that the court can interfere with the Minister's decision if he has acted on no evidence; or if he has come to a conclusion to which on the evidence he could not reasonably come; or if he has given a wrong interpretation to the words of the statute; or if he has taken into consideration matters which he ought not to have taken into account or vice versa; or has otherwise gone wrong in law.

[5] This dictum was cited with approval by the Supreme Court in *Harpers Trading (M) Sdn Bhd v National Union of Commercial Workers* [1991] 1 MLJ 417. It is clear that the court's duty is reasonably extensive. It is within that broad spectrum that the then Supreme Court in *Minister of Labour, Malaysia v National Union of Journalists, Malaysia and another appeal* [1991] 1 MLJ 24 made the following pronouncement on the relevant principles to be applied:

> The principles upon which an executive may exercise his discretion vested in him under any Act, particularly where the discretion is expressed in wide terms had been authoritatively laid

down in many cases, notably in the celebrated case of *Associated Provincial Picture Houses Ltd v Wednesbury Corp* [1948] 1 KB 223 and quoted with approval by Hashim Yeop Sani CJ (Malaya) in *Minister of Labour, Malaysia v Lie Seng Fan* [1990] 2 MLJ 9.

[6] Therein, the Supreme Court took the position that our courts had since the case of *Wednesbury Corp*, consistently applied the basic legal principles laid down in that case as guidelines. The application of those principles would require the court to undertake an objective appraisal or examination of the facts presented to the Minister at the material time. It is therefore in this context that the first question posed has to be answered.

SCOPE OF SECTION 20(3) OF THE ACT

[7] We turn to the second question which deals essentially with the scope of s 20 of the Act but more specifically sub-s (3) thereof. However, a holistic approach to the question necessitates a close look at the relevant provisions of the said section which stipulates:

> 20 Representations on dismissals
>
> (1) Where a workman, irrespective of whether he is a member of a trade union of workman or otherwise, considers that he has been dismissed without just cause or excuse by his employer, he may make representations in writing to the Director-General to be reinstated in his former employment; the representations may be filed at the office of the Director General nearest to the place of employment from which the workman was dismissed.
>
> (1A) The Director General shall not entertain any representations under subsection (1) unless such representations are filed within sixty days of the dismissal:
>
> Provided that where a workman is dismissed with notice he may file a representation at any time during the period of such notice but not later than sixty days from the expiry thereof.
>
> (2) (Upon receipt of the representations the Director General shall take such steps as he may consider necessary or expedient so that an expeditious settlement thereof is arrived at; where the Director General is satisfied that there is no likelihood of the representations being settled, he shall notify the Minister accordingly.
>
> (3) Upon receiving the notification of the Director General under subsection (2), the Minister may, if he thinks fit, refer the representations to the Court for an award.

[8] Now, the question posed is whether the Minister is obliged to refer representations to the Industrial Court under s 20(3) of the Act if he feels that there is a serious issue of fact and law to be determined. The word 'feels' is subject to eludication. If it means a finding or conclusion arrived at by the Minister on the basis of the available facts and documents before him, then so long as he has conducted an objective examination of those facts and documents in accordance with the legal principles discussed earlier, the Minister is under a duty to refer the representations to the Industrial Court for resolution. It has to be noted that the representations must

necessarily relate to the allegations made by the employees that they had been dismissed without just cause or excuse. This is implicit in s 20 of the Act. Furthermore, the serious issue of fact and law must have relevance to the resolution of the dispute between the employer and the employees arising from the representations. Given the reasons aforesaid, the answer to the second question postulated has to be in the affirmative.

MINISTER'S EXERCISE OF DISCRETION

[9] This brings us to the third question, that is, whether in the instant case, the Minister had exercised his discretion correctly. The appellant's main reason for challenging the Minister's decision in the High Court was that the Minister had acted outside his jurisdiction or without any jurisdiction. The High Court held that the representations made by the respondents could not be considered vexatious and frivolous as they raised a serious issue for determination concerning the relationship between the appellant and the Esso companies in Malaysia. It held that the Minister had exercised his discretion correctly in referring the said representations to the Industrial Court. This decision was upheld by the Court of Appeal in its majority judgment essentially on the ground that the High Court was correct in holding that there was a serious issue which could only be resolved by the Industrial Court. However, Abdul Aziz Mohamad JCA (as he then was) who dissented took the view that the representations made by the respondents had nothing in them; that the Minister had taken into account irrelevant considerations and failed to take into account matters which should have weighed on his mind.

[10] It seems clear that the central issue involves the question of whether the representations had raised a serious issue concerning the relationship between the appellant and the Esso companies in Malaysia which necessitated reference to the Industrial Court by the Minister. As we indicated earlier, the High Court took a positive stance and the Court of Appeal agreed with it.

[11] Before us, counsel for the appellant repeated the same arguments he canvassed before the High Court and the Court of Appeal. Essentially, he argued that there was no such corporate relationship between the appellant and the Esso companies in Malaysia because the Esso companies were separate entities which were managed differently. In short, they were quite independent of the appellant at all material times. However, there was a document exhibited as 'LAL 4' which apparently played a significant influence upon the Minister in exercising his discretion to refer the said representations to the Industrial Court. The High Court took cognizance of this fact. This is reflected in the following part of its judgment which states:

> The serious issue that requires to be determined by the Industrial Court is the relationship between the applicant company and Esso Malaysia Bhd. and other Esso Companies in Malaysia. The actual relationship between the applicant and the Esso companies can only

be determined if all the relevant documents such as the Memorandum and Articles of Association of each of the companies and also the collective agreements between the Union and the companies are produced and the provisions fully argued. This can only be done by calling at least a representative of the applicant to give evidence and be subjected to the cross-examination by the respondents. The Respondents must also be given the opportunities to bring in rebuttal evidence. This is a serious issue because it has bearing on whether the respondents No.2, 3 & 4 can be relocated in any of the other companies in Malaysia. As can be seen from the affidavits produced by both parties, there exist disputing claims in respect of such relationship. Exhibit LAL-4 as seen by the Minister can give rise to such relationship whereby respondents No 2, 3 & 4 may be able to be relocated into the other Esso companies in Malaysia.

[12] In the Court of Appeal, counsel for the appellant attempted to cast aspersions upon the relationship factor contending that for all intents and purposes the Esso companies and other affiliates were separate legal entities with which the appellant had no control whatsoever and therefore there was no connection at all between them. This contention was rejected by the Court of Appeal on the ground that the document exhibited as 'LAL-4' tended to show a contrary intention.

[13] Given its significance, it is therefore appropriate to take a closer look at this exh 'LAL-4'.

Background to EssoCliem Layoff

1 Esso Group of Companies comprises:

Esso Malaysia Bhd(EMB) — 65% Owned by Exxon Corp 35% by Malaysia

Esso Exploration Inc (EPMI) — 100% Foreign Owned by Exxon Corp

Exxon Chemicals Sdn Blid (ECM) — 100% Foreign Owned by Exxon Corp

2 Mgt managed to convinced the Union that a Multinational Company like Esso will never close shop. If need to close a section, they agreed to transfer workers to other affiliates within the Esso Group of Companies

3 Examples of their sectional closure:

1988 — EMB Ammonia Plant was shutdown. About 34 EMB employees was transferred to EPMI which was another affiliates.

1994 — EMB Port Klang Blending Plant was closed. About 35 employees were absolved in other EMB terminals.

1998 — EMB Senawang Distribution Plant will be shutdown. About 8 EMB employees will be transferred to other Plants.

1998 — ECM retrenched 3 employers quoting that 'we have made efforts... but to no avail. It is for this reason, you have to be retrenched.

4 ECM at meeting with Union on 29/12/97 informed that they had no obligation to absorb the 3 ECM employees in other affiliates. They will not pay more than 20 days Wages for Redundancy

5 Other Affiliate, EMB there are:

Esso Tasek Plant — 23 Industrial Workers working side by side with regulars for 15 years.

Esso Refinery Port Dickson — 100 Industrial Workers in LPG Plant & Bulk Loading Area.

6 ECM should make effort to absorb the 3 employees in Esso Tasek Plant or in Esso Refinery Port Dickson

[14] A perusal of the above document, in particular paragraph 1 therein, would seem to indicate that Esso Malaysia Bhd (EMB) was 65% owned by Exxon Corporation and Exxon Chemicals Sdn Bhd ('the appellant') was 100% foreign owned by Exxon Corporation. This tends to suggest a connection between the Esso companies with the appellant. Given this scenario, there might well have been some understanding as to the absorption or relocation of retrenched employees of the appellant in certain circumstances. That would not be an inconceivable supposition. As such, oral and/or documentary evidence would need to be led to establish this. It was in this context that the High Court held that the relationship factor raised a triable issue which ought to be ventilated and resolved in the Industrial Court.

[15] Counsel for the appellant has also submitted that the appellant had, in accordance with the guidelines provided in the Code of Conduct for Industrial Harmony, made efforts to redeploy or relocate the said respondents with Esso companies. Even so, it still begs the question as to whether it was also due to the set-up between the Esso Companies and the appellant as we have described earlier. As we said, this was not entirely inconceivable having regard to the contents in the document exh 'LAL-4'. Thus, oral evidence would have to be led to resolve this. A further factor which could have weighed upon the mind of the Minister was the existence of a common collective agreement as reflected in exh 'GHT-11'. This collective agreement involved the appellant, the Esso Companies and the union. There may be a need to ascertain the extent and scope of this document in order to clarify the actual relationship between the parties concerned. Again, oral evidence would be required.

[16] If some form of corporate relationship, however tenuous, existed between the appellant and the Esso companies, this might well be sufficient to suggest that there was some understanding that the appellant should take all reasonable steps to redeploy or relocate the respondents with any of the Esso companies in Malaysia in certain circumstances. True, there was documentary evidence to show that the appellant made attempts to redeploy the said respondents but failed. The respondents appeared to have disputed this or at least the extent of the attempts involved. As such, both oral and documentary evidence would have to be led. It would therefore be in this context that the Minister had thought it fit to refer the representations to the Industrial Court. We are inclined to agree with him. We hold that the Minister had acted reasonably and correctly in doing so.

A CONCLUSION

[17] For the reasons stated, the answer to the third question is again in the affirmative. That being the case, we find it appropriate to dismiss this appeal with costs. The deposit is to be paid out to the respondents to account for their taxed costs.

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Appeal dismissed.

Reported by Sally Kee

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